

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IN RE:

**CASE NO.: 19-31575-hcm
CHAPTER 13**

William M. Byers,

JUDGE H. Christopher Mott

aka Bill Byers,

aka William M. Byers, Jr.,

Debtor,

Christina O. Byers,

Joint Debtor.

/

**MOTION FOR RELIEF FROM AUTOMATIC STAY AGAINST REAL PROPERTY
LOCATED AT 6624 MARIPOSA DRIVE, EL PASO, TEXAS 79912 AND REQUEST
FOR HEARING IN EL PASO, TEXAS**

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR
INTERESTS.**

**IF NO TIMELY RESPONSE IS FILED WITHIN 14 DAYS FROM THE DATE OF
SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED
WITHOUT A HEARING BEING HELD.**

A TIMELY RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

TO THE HONORABLE JUDGE OF SAID COURT:

Secured Creditor, Reverse Mortgage Solutions, Inc., by and through the undersigned counsel, hereby moves this Court, pursuant to 11 U.S.C. § 362(d), for a modification of the automatic stay provisions for cause, and, in support thereof, states the following:

1. Debtor(s), William M. Byers and Christina O. Byers, filed a voluntary petition pursuant to Chapter 13 of the Bankruptcy Code on September 23, 2019.
2. Jurisdiction of this cause is granted to the Bankruptcy Court pursuant to 28 U.S.C. §1334,

11 U.S.C. § 362(d), Fed.R.Bankr.P. 4001(a), and all other applicable rules and statutes affecting the jurisdiction of the Bankruptcy Courts generally.

3. On October 16, 2013, William M. Byers and Christina O. Byers executed and delivered a Promissory Note (“Note”) and Deed of Trust (“Mortgage”) securing payment of the Note in the amount of \$226,500.00 to Cherry Creek Mortgage Co., Inc. The Mortgage was recorded on October 24, 2013, in Document Number 20130080190, in the Public Records of El Paso County, Texas. The loan was transferred to Secured Creditor. True and accurate copies of the documents establishing a perfected security interest and ability to enforce the terms of the Note are attached hereto as Composite Exhibit “A.” The documents include copies of the Note and any required endorsements, Recorded Mortgage, Assignment(s) of Mortgage, and any other applicable documentation supporting the right to seek a lift of the automatic stay to foreclose, if necessary.
4. The terms and conditions of the Note and Reverse Mortgage are in default due to failure to perform an obligation under the Reverse Mortgage by failing to maintain property insurance.
5. The mortgage provides Secured Creditor a lien on the real property located in El Paso County, Texas, and legally described as stated in the mortgage attached in Composite Exhibit “A.”

This property is located at the street address of: 6624 Mariposa Drive, El Paso, Texas 79912.

6. As of December 8, 2020, Secured Creditor is due the following amount:

| | |
|--------------------|-------------|
| Principal Advances | \$98,216.20 |
| | |

| | |
|---|--------------|
| Interest | \$26,998.88 |
| MIP | \$11,481.66 |
| Corporate Advances | \$28,124.70 |
| Intra Month Per Diem Total | \$109.54 |
| Total Amount Due | \$164,930.98 |
| 6/11/2020 – Corporate Advance – Hazard Insurance (6/5/2020-6/5/2021) | \$1,823.00 |
| Post-Petition Delinquency Amount | \$1,823.00 |

Documentation supporting this claim is attached hereto as Exhibit "B".

7. According to El Paso Central Appraisal District, the value of the property is \$175,741.00. See Exhibit "C" which is attached hereto and permissible as a property valuation under Fed. R. Evid. 803(8).
8. Based upon the Debtor(s)' First Amended Chapter 13 Plan (Docket No. 33), the Debtor is curing pre-petition arrears. There are no post-petition regular monthly payments due on the reverse mortgage, however the Debtors are required to maintain property taxes and insurance.
9. Secured Creditor's security interest in the subject property is being significantly jeopardized by Debtor(s)' failure to comply with the terms of the subject loan documents while Secured Creditor is prohibited from pursuing lawful remedies to protect such interest. Secured Creditor has no protection against the erosion of its collateral position and no other form of adequate protection is provided.
10. If Secured Creditor is not permitted to enforce its security interest in the collateral or be

provided with adequate protection, it will suffer irreparable injury, loss, and damage.

11. Secured Creditor respectfully requests the Court grant it relief from the Automatic Stay in this cause pursuant to §362(d)(1) of the Bankruptcy Code, for cause, namely the lack of adequate protection to Secured Creditor for its interest in the above stated collateral.
12. Once the stay is terminated, the Debtor will have minimal motivation to insure, preserve, or protect the collateral; therefore, Secured Creditor requests that the Court waive the 14-day stay period imposed by Fed.R.Bankr.P. 4001(a)(3).
13. Secured Creditor has incurred court costs and attorney's fees in this proceeding and will incur additional fees, costs and expenses in foreclosing the Mortgage and in preserving and protecting the property, all of which additional sums are secured by the lien of the Mortgage. Secured Creditor seeks an award of its reasonable attorneys' fees and costs, or alternatively, leave to seek recovery of its reasonable attorneys' fees and costs in any pending or subsequent foreclosure proceeding.

WHEREFORE, Secured Creditor, prays this Honorable Court enter an order modifying the automatic stay under 11 U.S.C. § 362(d) to permit Secured Creditor to take any and all steps necessary to exercise any and all rights it may have in the collateral described herein, to gain possession of said collateral, to waive the 14-day stay imposed by Fed.R.Bankr.P. 4001(a)(3), to seek recovery

Intentionally left blank.

of its reasonable attorneys' fees and costs incurred in this proceeding, and to any such further relief as this Honorable Court deems just and appropriate.

Date: January 29, 2021

Robertson, Anschutz, Schneid, Crane & Partners,
PLLC
Attorney for Secured Creditor
5601 Executive Drive, Suite 400
Irving, TX 75038
817-873-3080 Ext 156

By: /s/ Tricia Ann Morra
Tricia Ann Morra, Esquire
TXBN 24117700
tmorra@raslg.com

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on January 29, 2021, I caused a true and exact copy of the foregoing, which was filed with the Clerk of Court, to be served either via CM/ECF to those so authorized, or via United States Mail to the following parties:

William M. Byers **U.S. Mail**
6624 Mariposa Dr.
El Paso, TX 79912-3216

Christina O. Byers **U.S. Mail**
6624 Mariposa Dr.
El Paso, TX 79912-3216

Timothy V. Daniel
Timothy V. Daniel, P.C.
603 Mississippi Ave.
El Paso, TX 79902

Stuart C. Cox
El Paso Chapter 13 Trustee
1760 N. Lee Trevino Dr.
El Paso, TX 79936

By: /s/ Tricia Ann Morra
Tricia Ann Morra